IN THE HIGH COURT OF JUDICATURE CHHATTISGARH

AT BILASPUR

Writ Petition No. 1509 of 2004

PETITIONERS :1 Subhaskar, aged 47 years,
S/o. Late Kartik Shankar,
(Village Assistant)
Secretary Janpat Panchayat
Saraipali, Tahsil Saraipali
District Mahasamund (C.G.)

2. Rohidas Taram, Aged 35 years
S/o. Shri Ramchandra Taram
Sarpanch, Gram Panchayat Sirsida
Janpad Panchayat-Charama
District Kanker (C.G.)

P. R. No. 1502 by
Presented by Shri L.K. Das
dated 01.6.04

VERSUS

RESPONDENTS :1 State of Chhattisgarh
Through Secretary
Department of Panchayat & Rural
Development,
D.K.S. Bhawan, Raipur (C.G.)

2. Collector Kanker,
District Kanker (C.G.)

3. Chief Executive Officer
Janpad Panchayat Charama
Tahsil and District Kanker (C.G.)

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31/5/04
Clerk to A. G. Bilaspur

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PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA , FOR ISSUANCE OF SUITABLE DIRECTIONS, ORDERS OR WRITS INCLUDING WRITS IN THE NATURE OF CERTIORARI, MANDAMUS ETC.

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XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P. 1509/ सन् 2004

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	23.12.2004 On a mention being made, the matter is taken up for hearing. Shri L.C. Dash, counsel for the petitioners. Shri Utkarsh Verma, Panel Lawyer for the State/respondents No.1 and 2. Shri Alok Bakshi, counsel for respondent No.3. Heard. The petitioners have preferred this writ petition under Article 226/227 of the Constitution of India questioning the legality and propriety of the notices Annexures P-2 & P-3, whereby each of the petitioners have been asked to pay an amount of Rs.64,034/-. No return has already been filed on behalf of the respondents, therefore, as agreed by learned counsel for the parties, the matter is being finally disposed of at the admission stage itself. The case of the petitioners as set out in the writ petition is that petitioner No.1 is the Secretary (Village Assistant), Janpad Panchayat, Saraipali and petitioner No.2 is the Sarpanch of Gram Panchayat: Sirsida. A civil suit was filed by one Meena Bai & Ramesh Kumar against respondents No.2 & 3 for compensation, in the Court of 1st Additional District Judge, Kanker, on the ground that on account of falling of a wall of the water tank on 18.7.2001 their son Hitendra Kumar died, in that civil suit a compensation of Rs.1,50,000/- was	

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आदेश पत्रक (पूर्वानुबद्ध)

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claimed, and that suit was contested by respondents No.2 & 3. However, vide the judgment and decree dated 5th December, 2002, the learned Additional District Judge passed a decree of Rs.1,00,000/- against respondents No.2 & 3 herein and they were directed to pay the amount of compensation to the parents of Hitendra Kumar, the plaintiffs in that case. It is stated that the amount has already been paid by the respondents. As a consequence of that the respondents issued the impugned notices of recovery from the petitioners on the ground that the said water tank was constructed under their supervision and it was mentioned that since the quality of construction was poor, that is why the wall collapsed, as a result of which the accident occurred and the respondents were made liable for the compensation amount. The ground, which has been raised in this writ petition by the petitioners, is that they were not parties in the suit, therefore, they are not responsible for the compensation and the recovery is being made from them without giving them opportunity of hearing in an arbitrary manner. Therefore, it has been prayed that the notices Annexures P-2 & P-3 be quashed.

On the other hand, the ground which has been taken by the respondents mainly mentioned in reply para 5.7 of the return filed on behalf of the State/respondents No.1 & 2 is that since they have paid the amount which is a result of direct consequence of

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

the petitioners, as they failed to ensure proper quality of the water tank at the time of construction which is directly attributable to the wrongful acts of the petitioners, therefore, the compensation amount awarded by the decree of the civil suit is recoverable from the petitioners. It has been further mentioned that the erection and construction of the water tank was under the supervision of the petitioners, therefore, they are responsible for the said amount. After inquiry, respondent No.3 submitted a report to the Zila Panchayat, Kanker, that the petitioners are responsible for extremely poor construction of the water tank, the report was submitted to the Government and the Government after due consideration passed the order of recovery of the compensation amount from the petitioners.

Learned counsel for the respondents argued that as the water tank was constructed under the supervision of the petitioners, it was their duty to ensure the quality of construction which they failed and ultimately the accident took place, as a result of which a boy died and the Additional District Judge passed the order for compensation, therefore, the compensation is recoverable from the petitioners.

On the other hand, learned counsel for the petitioners argued that the petitioners were never given show cause notice as to why the amount should not be recovered from them. He further argued that the petitioners were never asked to appear before any authority and

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आदेश पत्रक (पूर्वानुबद्ध)

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	explain as to why the amount should not be recovered from them, and without giving them any opportunity to defend their case, they have been held responsible. Having heard learned counsel for the parties and having perused the record, I am of the opinion that the point raised by learned counsel for the petitioners is reasonable, as the principle of natural justice has been violated in this case. It is true that respondents No.2 & 3 and the Government were made responsible for compensation amount, which was a result of falling of the wall of a water tank, which was constructed under the supervision of the petitioners, but the petitioners were not party before the Additional District Judge, therefore, there was no opportunity for them to defend the case. Proper course for the respondents was that they ought to have instituted an inquiry to the fact whether the petitioners were negligent and responsible for poor construction or some other persons were responsible for poor construction, and the petitioners and those other persons responsible for poor construction should have been given opportunity to defend their case and allow them to produce record which they wanted to produce. After hearing the petitioners or any other person responsible, the respondents ought to have passed the order. Since, no opportunity was given to	

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आदेश पत्रक (पूर्वानुबद्ध)

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	the petitioners, therefore, on this ground only the impugned notices are liable to be quashed. In the result, the writ petition is allowed and the impugned notices are quashed. However, it is made clear that the respondents shall not be precluded from instituting inquiry and after holding the inquiry, in accordance with law they will be entitled to proceed against the responsible persons. In view of this order, M.(W.)P.No.1347/2004 stands disposed of. Certified copy as per Rules. Sd/- L.C.BHADOO Judge	
Soma		